



2015–16 Annual Review



ACAT

AUSTRALIAN CAPITAL TERRITORY
CIVIL & ADMINISTRATIVE TRIBUNAL

CONTENTS

| | |
|---|--------------------|
| About Us | 3 |
| About this Review | 3 |
| About the Tribunal | 3 |
| Principles and Objects | 4 |
| Members | 5 |
| Tribunal Members | 5 |
| Presidential Members | 6 |
| Non-Presidential Members | 6 |
| Sessional Senior Members | 7 |
| Sessional Ordinary Members | 8 |
| Member Training | 8 |
| Year at a Glance | 9 |
| New Applications received by Subject Matter 2015–16 | 9 |
| Overall Workload and Outcomes | 9 |
| Resolving Cases | 10 |
| Appeals and Referrals | 11 |
| Civil, Retirement Villages and Unit Titles Disputes | 12 |
| Residential Tenancies Disputes | 13 |
| Administrative Review | 14 |
| Occupational and Professional Regulation | 17 |
| Discrimination | 19 |
| Mental Health | 20 |
| Guardianship and Management of Property | 22 |
| Utilities – Energy and Water | 24 |
| Energy and Water Hardship Applications | 24 |
| Energy and Water Complaint Applications | 25 |
| Further information | 38 |
| Material Interests | 38 |
| Systemic Issues | 38 |
| Engagement | 38 |
| Tribunal Excellence Framework | 38 |
| ACAT Forms re-design project | 39 |
| In Prospect | 39 |
| Thanks | 39 |

ABOUT US

ABOUT THIS REVIEW

The ACT Civil and Administrative Tribunal (ACAT or the tribunal) is administered by the ACT Law Courts and Tribunal Administration within the Justice and Community Safety Directorate.

Each year, the ACAT publishes this review on its activities, achievements and challenges. Reports on performance, financial management and strategic indicators for the financial year are set out at Output 3.1 in the annual report of the Directorate for 2015–16. This annual review provides more detailed information about the tribunal's case workload and outcomes in the 2015–16 financial year.

During the course of the review period the tribunal switched to a new case management system. Data for finalised and pending matters was migrated to the new system on 7 December 2015. Considerable effort was put into minimising loss or corruption of data. Much of the tribunal's work is recorded differently in the new system, including by use of drop-down boxes offering limited selections and mandatory data fields. Anyone who has been involved with such a process will appreciate that it is difficult to be certain of consistency in reporting when data drawn from one system is transitioned into a different recording framework. With that disclaimer, we are reasonably confident that the data in this report is accurate and comparable with previous years.

ABOUT THE TRIBUNAL

ACAT is established under the ACT Civil and Administrative Tribunal Act 2008 (the ACAT Act). It commenced operation in February 2009. ACAT is located on Level 4, 1 Moore Street, Canberra City. Contact details are provided on the tribunal's website at www.acat.act.gov.au. This report relates to the tribunal's seventh full year of operation.

ACAT considers and resolves applications lodged by individuals, businesses, government agencies and occupational regulatory authorities about many different things. The subject matter of applications extends from the review of multi-million dollar planning and taxation decisions to the disconnection of essential services. Regardless of the subject matter, each case is of fundamental importance to the participants and often, to sectors within the ACT community. Applications can be made about:

- the review of a large number of administrative decisions
- discrimination complaints
- guardianship, financial management and enduring powers of attorney
- mental health treatment and care
- residential tenancies disputes
- energy and water hardship and complaints/investigations
- civil disputes valued at under \$10,000 (to be increased to \$25,000 from 15 December 2016)
- unit titles and retirement villages disputes
- liquor licensing
- compliance with some long service leave obligations

- the discipline and regulation of many occupations including construction occupations, security guards, real estate agents, teachers, veterinarians and the health and legal professions.

Different types of cases require different procedural responses to ensure that the objects of the tribunal's legislation and the principles by which the tribunal operates are met.

A pro-active case management approach is taken to all cases with directions being set and followed up by the tribunal to minimise delays in progressing cases to resolution.

The ACAT is supported by a registry of 27 staff, employed by the ACT Government under the Justice and Community Safety Directorate.

PRINCIPLES AND OBJECTS

Section 7 of the ACAT Act provides that when it carries out its functions, the tribunal must ensure that its procedures are as simple, quick, inexpensive and informal as is consistent with achieving justice. It must observe natural justice and procedural fairness.

The objects of the ACAT Act are set out in section 6. They are to:

- provide for a wide range of matters to be resolved by the tribunal
- ensure that access to the tribunal is simple and inexpensive
- ensure that applications are resolved as quickly as is consistent with achieving justice
- ensure that decisions are fair
- enhance the quality of decision making under legislation
- encourage, and bring about, compliance in decision making under legislation
- encourage tribunal members to act in a way that promotes the collegiate nature of the tribunal, and
- identify and bring to the Attorney General's attention systemic problems in relation to the operation of authorising laws.

MEMBERS

TRIBUNAL MEMBERS

Members are appointed by the Executive. Transparency of the appointment process and independence of members is facilitated by a clear statutory framework.

At the start of the review period the head of jurisdiction was the General President who had responsibility for ensuring the orderly and prompt discharge of tribunal business. The Appeal President was responsible for the orderly and prompt discharge of internal appeals and of referrals to the Supreme Court.

In January and February 2016 respectively, the appointments of Appeal President Bill Stefaniak RFD AM, and part-time presidential member Professor Peta Spender ended. Both were foundation presidential members of the ACAT, and their considerable contribution to the establishment and ongoing operation of the ACAT is acknowledged.

General President Linda Crebbin was re-appointed for 12 months to 1 January 2017 as both General President and Appeal President, pending a review of the jurisdiction and structure of the ACAT. As a result of the review, the ACAT Act was amended in June 2016 by combining the positions of General President and Appeal President to create the role of ACAT President, responsible for the orderly and prompt discharge of all tribunal business and ensuring that tribunal decisions are made according to law, including internal appeals and referrals to the Supreme Court. The President allocates members to tribunals to deal with applications and has a number of other statutory functions relating to the operation of the tribunal.

Two full-time presidential members and a senior member were appointed on 1 January 2016. Presidential Member Geoffrey McCarthy and Senior Member Heidi Robinson were new appointments. Presidential Member Mary-Therese Daniel had formerly held the appointment of full-time Ordinary Member with the ACAT.

Professor Peta Spender and Robert Orr PSM QC were also appointed as sessional acting presidential members, joining Christopher Chenoweth OAM in this capacity. The appointment of Elizabeth Symons as a part-time presidential member continues until January 2019.

In addition, the tribunal had 63 sessional non-presidential members in the review period. The names of members are set out below.

The requirements for appointment and terms of appointment for all members are detailed in Part 9 of the ACAT Act. Members must give an undertaking to the Territory before exercising any function as a member. Presidential members give an undertaking before a judge of the Supreme Court and non-presidential members give an undertaking before a presidential member. The terms of the undertaking are set out in the ACAT Act as follows:

I, [name] undertake to the Territory that I will well and truly serve in the office of [presidential member/ non-presidential member/assessor] and that I will do right to all people, according to law, without fear or favour, affection or ill-will.

The appointment of a non-presidential member may be ended by the Executive as set out in section 99 of the ACAT Act for misbehaviour, incapacity or failure to disclose a material interest. Presidential members may only be removed from office, like judicial officers, in accordance with the provisions of the Judicial Commission Act 1994.

Remuneration is determined by the ACT Remuneration Tribunal. The relevant determinations for the review period are numbers 4 of 2013 (amended), 11 of 2015, 16 of 2015 and 16 of 2015 (amended).

Presidential members cannot engage in remunerative employment or accept an appointment to another statutory position without the Attorney General's written consent.

Members are required by section 51 of the ACAT Act to disclose any material interest they have in a matter in an application. They must not take part in the tribunal dealing with the application unless each party consents. The President can direct a member not to deal with an application, even where the parties give consent. The President provides the Attorney-General with a written report about each disclosure after the end of each financial year.

Many sessional members have specialised knowledge or experience about the areas in which the tribunal works. About 30 sessional members are regularly involved in tribunal work. The core group includes lawyers, psychiatrists, mediators, people with expertise in planning and related matters and a number of people who sit on hearings as members of the community. Community members are used in mental health, guardianship, utilities and occupational discipline matters. Sessional members provide an invaluable service to the ACT community. Their work is valued and the presidential members and staff of the tribunal acknowledge them.

ACAT Members during the period under review were:

PRESIDENTIAL MEMBERS

| Linda CREBBIN | General President | Appointed 17/11/2008 to 01/01/2016 |
|---------------------------|--|------------------------------------|
| | General President and Appeal President | Appointed 2/01/2016 to 1/1/2017 |
| Bill STEFANIAK, RFD AM | Appeal President | Appointed 17/11/2008 to 01/01/2016 |
| Mary-Therese DANIEL | Presidential Member | Appointed 01/01/2016 to 31/12/2022 |
| Geoffrey MCCARTHY | Presidential Member | Appointed 01/01/2016 to 31/12/2022 |
| Peta SPENDER | Part-Time President | Appointed 02/02/2009 to 02/02/2016 |
| | A/g Presidential Member | Appointed 03/02/2016 to 02/02/2023 |
| Elizabeth SYMONS | Part-Time President | Appointed 01/04/2012 to 01/01/2019 |
| Christopher CHENOWETH OAM | A/g Presidential Member | Appointed 23/07/2009 to 24/07/2016 |
| Robert ORR PSM QC | A/g Presidential Member | Appointed 01/01/2016 to 31/12/2022 |

NON-PRESIDENTIAL MEMBERS

| Mary-Therese DANIEL | Full time member | (to 01/01/2016) |
|---------------------|-------------------------|------------------------------------|
| Heidi Robinson | Full time senior member | Appointed 01/01/2016 to 31/12/2020 |

SESSIONAL SENIOR MEMBERS

| | |
|----------------------------------|--------------------------------|
| ANFORTH Allan | HUGHSON Bernard |
| BEACROFT Laura (from 1 Jan 2016) | LENNARD Jann |
| BIGINELL Nigel | LOVELL Denis |
| BOYLE Alysoun | LUNNEY Graeme |
| BRENNAN Mary | MATHESON Marie |
| BRODRICK Frank | MEAGHER Bryan |
| CHENOWETH Christopher | OWEN Cathy |
| CORBY Wilhelmena | ORR Robert |
| CREYKE Robin | PEGRUM Roger |
| DAVEY Adrian | QUAID Jack |
| DONOHUE Louise | SINCLAIR Michael |
| DREW Leslie | SPENDER Peta (from 3 Feb 2016) |
| FERGUSON Elspeth | SUTHERLAND Peter |
| FOLEY Anthony James | TRICKETT Graeme |
| HERRICK Stephen | |

SESSIONAL ORDINARY MEMBERS

| | |
|--------------------------------|--------------------|
| BEACROFT Laura (to 1 Jan 2016) | MAYES Leasa |
| BURDACK Leonie | MITCHELL Imogen |
| BYRNE Donald | MORRIS Athol |
| CONWAY Peter (to 2 Feb 2016) | NEWMARCH Eileen |
| DAVIES Robyn | NOAKES Anthony |
| DELAHUNT Anne-Marie | O'KEEFE Elissa |
| FAUNCE Thomas | PEARCY William |
| GREAGG Jane | SINGER Andrew |
| HAMILTON Janelle | SOO Tuck Meng |
| HARDMAN David | STEEPER Elizabeth |
| HIRD Harold (to 2 Feb 2016) | SYKES Ian |
| KENNEDY Rosemary | VASSAROTTI Rebecca |
| KLEMPFNER George | WEBER Linda |
| KRUEGER Joanne | WEDGWOOD Robert |
| LONG Francis | WILLIAMS Athol |
| LUCAS Dianne | WILLIAMS Leanne |
| MAHER Rhonda | WRIGHT Graham |

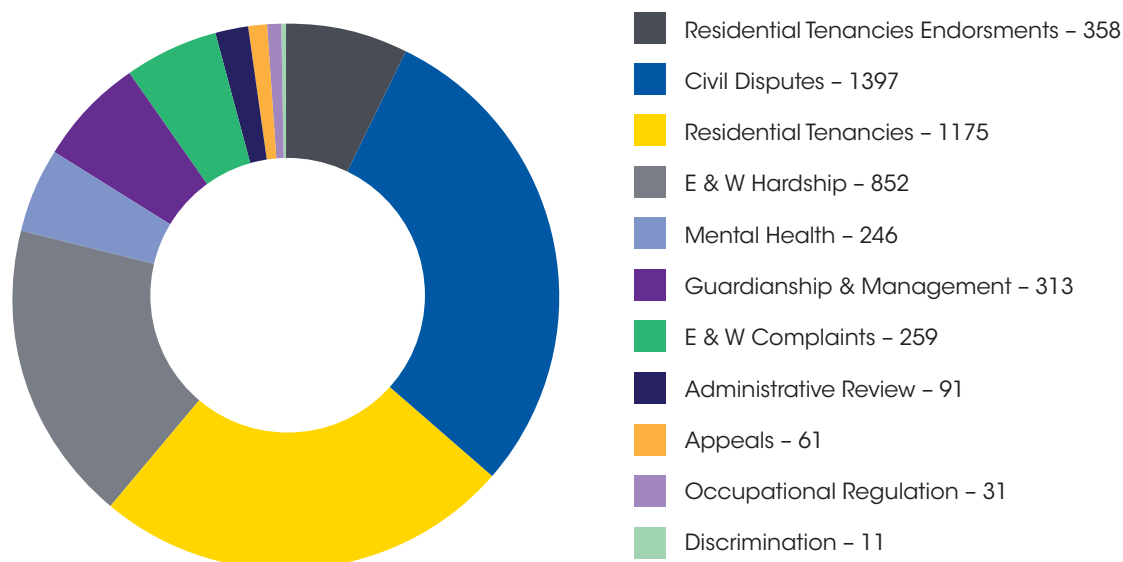
MEMBER TRAINING

Members participate in training about major changes in the law and in discussion groups about the tribunal's operations in particular areas such as its residential tenancies, unit titles and utilities work. Members are regularly advised of new decisions.

During 2015–16, a number of members participated in conferences, including the 2016 Council of Australasian Tribunals Annual Conference and the 2015 National Administrative Law Conference.

YEAR AT A GLANCE

NEW APPLICATIONS RECEIVED BY SUBJECT MATTER 2015–16



OVERALL WORKLOAD AND OUTCOMES

The number of new applications decreased in most work areas during this year. The reasons for this, as far as they can be ascertained, are dealt with in greater detail below. Paradoxically, the number of all listing events; mediations, conferences and hearing days, increased as shown by the table on page 10. This is likely to be attributable to the new case management system with its mandatory fields and drop down boxes with limited selections – there is now greater consistency in how resumed or adjourned events are recorded. There were a small number of lengthy hearings in the administrative review and occupational regulation areas that had an impact on the increase in hearing days. The average time files remained open was stable in most work areas and the clearance rate remains high, suggesting that the predominant cause for the increase in listings, particularly of conferences, is a recording difference rather than an actual increase. It is likely that events have been under recorded in previous years. We acknowledge however, that repeat listing events contribute to additional expense for parties and potential inefficiencies and so this will be kept under review.

| | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications lodged* | 5759 | 5824 | 5730 | 5535 | 4794 |
| Files finalised* | 6103 | 6122 | 4905 | 4627 | 4359 |
| Applications pending # | 1068 | 1167 | 1021 | 1025 | 1056 |
| Pending > 12 months # | 32 | 48 | 10 | 28 | 23 |
| Clearance rate # | 110% | 107 % | 102 % | 99.91% | 103.7% |
| Reviews held ^ | 2336 | 2487 | 2246 | 2509 | 2363 |

Notes:

* includes applications for endorsement of inconsistent terms; # does not include mental health, guardianship and utilities files; ^ reviews held on tribunal's own initiative in mental health, guardianship and utilities cases

RESOLVING CASES

Applications in the tribunal's civil, residential tenancies, unit titles, discrimination, administrative review and occupational regulatory work areas are resolved using alternative dispute resolution events such as mediation or conferencing and, only where necessary, hearings.

Energy and water complaints are mostly resolved using investigative, conciliation and referral techniques with a very small number of matters proceeding to hearing.

Applications in the energy and water hardship, mental health and guardianship work areas are usually resolved in hearings because of the nature of those cases and the need for authoritative decisions to be made quickly. There are few cases in these work areas in which orders can be made as a result of an agreement reached between the relevant parties.

In some matters parties reach agreement before or during a substantive hearing and finalise the application by either withdrawing it or asking the tribunal to make orders in accordance with the agreement reached.

The table below compares the number of tribunal resolution events for each year since commencement. The increase in listing events, particularly conferences, is discussed under the heading "Overall Workload and Outcomes" on page 9.

| Resolution Events – All Work Areas | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|--|---------|---------|---------|---------|---------|
| Mediation/Preliminary Conferences | 1273 | 1322 | 1257 | 1294 | 1465 |
| Interim Hearings | 565 | 333 | 176 | 130 | 149 |
| Motions Hearings | 309 | 224 | 289 | 296 | 319 |
| Substantive Hearings (includes resumed hearing days) | 6224 | 6522 | 5616 | 6428 | 6522 |

In keeping with the tribunal's objects, mediation and conferencing is generally used at the early stages of applications. Even for matters that are not resolved, the methods assist parties to narrow the issues in question and to better understand each other's perspective.

A number of members are accredited mediators. Seventeen members and the tribunal's Registrar have undertaken ADR training. Members are allocated to conduct mediations and conferences rather than external mediators because they can, in appropriate matters, make directions, undertake assessments of quantum and make orders to finalise applications. This allows the tribunal to deal with matters in a timely way and avoids delays connected to referrals to external agencies.

The Review of Alternate Dispute Resolution in the ACT Magistrates Court and ACT Civil and Administrative Tribunal (ADR Review) conducted in September 2014 made recommendations about ADR processes in the tribunal, which were considered in the 2014–2015 year. A number of the recommendations were implemented in the review period and others are being considered in planning for the introduction of an increased civil jurisdiction in December 2016.

APPEALS AND REFERRALS

The Appeal President was responsible for the discharge of tribunal business relating to referrals and appeals, including the allocation of members to appeal hearings, until 29 June 2016.

A party to an original application, may, for most cases, lodge an application for appeal within the tribunal on a question of fact or of law, once the tribunal has decided the original application. There is no internal appeal process for decisions made under the Heritage Act 2004, the Planning and Development Act 2007 and the Tree Protection Act 2005. Parties in these matters may only appeal to the Supreme Court on a question of law.

In the reporting period, 61 applications for appeal were lodged with the tribunal and 54 applications were finalised.

| Internal Appeals | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications lodged | 52 | 55 | 55 | 56 | 61 |
| Applications Finalised | 60 | 59 | 46 | 58 | 54 |

| Type of Appeals | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|-------------------------|---------|---------|---------|---------|---------|
| Civil Disputes | 11 | 17 | 12 | 11 | 19 |
| Residential Tenancies | 22 | 18 | 23 | 19 | 26 |
| Occupational Regulation | 5 | 5 | 2 | 3 | 4 |
| Administrative Review | 5 | 8 | 9 | 11 | 5 |
| Discrimination | 2 | 4 | 3 | 5 | 0 |
| Mental Health | 1 | 1 | 3 | 1 | 3 |
| Guardianship | 4 | 0 | 1 | 2 | 1 |
| Energy and Water | 2 | 2 | 2 | 1 | 1 |
| Extension of Time | | | | 3 | 2 |

The tribunal may refer questions of law and original applications or appeals to the Supreme Court. One referral of a question of law was made in the period under review relating to the Tribunal's jurisdiction to deal with certain residential tenancies disputes within the Wreck Bay community.

Applications were lodged with the Supreme Court to appeal from ten decisions. An appeal was upheld in one matter which was remitted to the tribunal for re-hearing. Six of the applications were dismissed and one discontinued. Two were rejected for non-compliance with Court Rules and not pursued.

The Supreme Court also completed its consideration of appeals filed in earlier years in eight matters. Three appeals were upheld and decisions substituted by the Court. Four appeals were dismissed and one discontinued.

One application was made for the review of a decision of a member to refuse to disqualify himself from hearing a matter. The application was unsuccessful.

CIVIL, RETIREMENT VILLAGES AND UNIT TITLES DISPUTES

ACAT decides applications relating to civil disputes about contracts, damages, debt, goods, nuisance, trespass, debt declarations, common boundaries (fences) and other matters that are stated to be civil dispute applications in an authorising law. For the period under review the tribunal could determine disputes for amounts of \$10,000 or less, but parties could consent to the tribunal dealing with applications for sums greater than this.

Most civil applications are resolved at alternative dispute resolution conferences before hearing. There is a focus on ensuring that conferences and hearings are listed with minimal delay. Preliminary conferences are usually held within three to four weeks of receipt of a response document. Hearings are usually listed within six to eight weeks of an unsuccessful conference.

| | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|---------------------------------------|---------|---------|---------|---------|---------|
| Civil Applications Lodged* | 2231 | 1963 | 1835 | 1537 | 1326 |
| Common Boundaries Applications Lodged | 27 | 26 | 32 | 12 | 27 |
| Unit Titles Applications Lodged | 48 | 30 | 27 | 52 | 43 |
| Retirement Villages | 0 | 0 | 3 | 1 | 1 |
| Applications finalised | 2482 | 2177 | 2072 | 1547 | 1528 |

* Applications to re-list matters or to set aside default judgements are not recorded as new applications.

The number of new applications in this work area decreased over the period. There is no obvious explanation for the decrease, although it appears to have mostly involved claims for smaller amounts. The average number of days lapsed between the opening of a file and the closing of the file remained stable. Measures such as restricting adjournments of conferences, increasing focus on ensuring parties are prepared for hearings to further reduce the frequency of adjournments, regularly reviewing files that have been open for more than 6 months and using members to conduct preliminary conferences are employed to contribute to this result.

The high number of finalised matters may be affected by the transition to the new case management system with its greater accuracy of recording.

Applications can be made to the ACAT under the Retirement Villages Act 2012 to resolve disputes arising within a retirement village. Disputes about the rights of residents, operators' obligations in relation to maintenance and financial matters, and residents' involvement in village management may be brought to the ACAT. One application was filed in the period.

The Unit Titles (Management) Act 2011 empowers the tribunal to hear a range of applications about unit titles holdings. There were 43 applications in the period, a decrease from the previous financial year. Unit title and retirement village disputes are often complex and can include many parties with competing interests. Directions hearings are held in the first instance so that a member can identify the issues in dispute, any additional parties that need to be joined and determine the best procedure for dealing with the particular case. Some matters lend themselves to early mediation, while others require interim determinations and quick hearings.

RESIDENTIAL TENANCIES DISPUTES

ACAT has jurisdiction under the Residential Tenancies Act 1997 to hear and determine disputes arising from private and public tenancies and occupancy agreements.

The tribunal also considers applications for endorsement of inconsistent terms of tenancy agreements and holds negotiation conferences for matters referred from the Office of Rental Bonds.

The number of new applications about disputes decreased slightly from the previous year. The average number of days lapsed between the opening of a residential tenancies file and the closing of that file remained stable.

Applications for endorsement also decreased from the previous period. The transition to the new case management system identified a problem with the process used to record the finalisation of applications for endorsement. During the review period a number of factors then led to significant delays in both processing these applications and in finalising them. A new process has been put in place to minimise the risk of disruptions to workflow and work is underway on a more rigorous procedure for recording requisitions of applications, rejections and finalisations generally.

| Residential Tenancies | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------------------|---------|---------|---------|---------|---------|
| Applications Lodged* | 1266 | 1247 | 1150 | 1191 | 1175 |
| Applications Finalised | 1269 | 1367 | 1132 | 1152 | 1176 |
| Endorsement applications | 392 | 615 | 441 | 374 | 358 |
| Endorsement applications completed | 372 | 610 | 379 | 429 | 328 |

* Includes matters referred by the Office of Rental Bonds

The outreach project for public housing tenancy matters with Canberra Community Law (CCL), continued throughout the period, with the tribunal providing office space one morning a week for CCL to advise and assist tenants attending the tribunal for termination and possession matters. CCL runs the Street Law project, aimed at assisting people who are homeless or who are at risk of becoming homeless. Tribunal members value this program – few tenants seek legal advice before coming to the tribunal and most are ill-prepared to answer questions and provide the information required for the tribunal to consider whether a conditional, or unconditional, or no termination and possession order should be made in relation to them. Matters are “stood down” while tenants seek advice and arrange representation. The program makes an important contribution to access to justice for tenants and assists the tribunal to comply with the requirements of procedural fairness.

ADMINISTRATIVE REVIEW

The tribunal reviews a wide range of decisions made by government entities. A number of new “reviewable decisions” were added to the tribunal’s jurisdiction during the year.

The tables that follow show the number of applications made and finalised over five years and the type of decisions for which review has been sought. Decisions with similar subject matter have been grouped together. For example, applications for review of decisions about change of use charges, motor vehicle duty, payroll tax, rates, land tax, stamp duty and first home owners’ grants have been grouped together under the classification “Revenue”.

| Administrative Review | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 134 | 103 | 99 | 125 | 91 |
| Applications Finalised | 100 | 126 | 111 | 132 | 102 |

| Decision Type | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|----------------------------------|---------|---------|---------|---------|---------|
| Cases subject to 120 day limit | | | | | |
| Planning & Development | 34 | 25 | 7 | 19 | 22 |
| Heritage | 1 | 5 | 2 | 2 | 1 |
| Tree Protection | 2 | 2 | 6 | 2 | 4 |
| Other Cases | | | | | |
| Building & Construction | 13 | 14 | 6 | 7 | 4 |
| Revenue | 57 | 29 | 29 | 62 | 27 |
| Licences & Permits | 9 | 2 | 4 | 2 | 12 |
| Dangerous Dog Licence | 2 | 3 | 3 | 4 | 2 |
| Freedom of Information | 5 | 4 | 7 | 6 | 4 |
| Housing Allocation/Rental Rebate | 6 | 2 | 7 | 15 | 5 |
| Miscellaneous | 5 | 17 | 28 | 6 | 10 |

Applications concerning the same, or a substantially similar, decision may be heard together. The 91 new applications lodged related to 79 matters. The Tribunal’s practice had been to require people with joint and separate interests in a decision to file separate applications; for example, for review of a decision about land tax or a development relating to jointly owned land. The applications were heard together. The practice was changed in the review period so that only one application is now required. A drop in the number of applications was expected for this reason, but the number of such cases was low and there was still a significant reduction in applications.

Thirty-two mediations were listed with eight matters resolved at or after the mediation and before hearing. The ADR review referred to earlier noted stakeholder feedback that ADR was over-utilised in the administrative review area, that mediation rather than conciliation was the first preference where conciliation might have been more apt, and that there was an unsatisfactorily low resolution rate given the relatively high cost of the senior members used as mediators and the time and expense for the parties.

From January 2016 the tribunal has applied a more stringent assessment of suitability for ADR, and a larger proportion of matters have been listed for preliminary conference using a conciliation model rather than mediation. Due to the change of case management system, and the fact that these changes occurred over the course of the reporting year, it is not possible to extract reporting measures that enable us to draw reliable conclusions about the effectiveness of the changed approach.

The ADR Review also recommended that the Tribunal use valuer members in revenue matters involving valuation. The Attorney-General has since appointed three valuers as senior members and they have been allocated to the tribunal for relevant matters.

Age of pending applications for administrative review as at 30 June 2016

| Age of files | 0–3 months | 3–6 months | 6–9 months | 9–12 months | 12 months+ |
|--------------|------------|------------|------------|-------------|------------|
| No of files | 18 | 6 | 9 | 0 | 3 |
| % of files | 48.64 | 16.22 | 24.32 | 0 | 10.82 |

The Tribunal aims to have all applications completed in less than twelve months. The three matters which are more than twelve months old involved a matter that was remitted to the tribunal by the Supreme Court, and two complex matters with hearings held over lengthy periods.

Section 22P of the ACAT Act requires applications made under the Heritage Act 2004, the Planning and Development Act 2007 and the Tree Protection Act 2005 to be decided within 120 days after the date the application is made. The time for deciding the application may be extended by the President if she is satisfied that the extension is in the interests of justice. The time limit is difficult to meet in matters in which there are a number of parties, or when parties ask for additional time for mediation or when an collateral or interlocutory issue interrupts the tight hearing preparation schedule.

Time was extended for several applications. Requests to extend time were either made jointly or were not opposed. For some matters, parties were required to file brief submissions explaining why the extension sought was in the interests of justice. The information provided below explains the circumstances in which each extension was granted.

212 NORTHBOURNE PTY LTD v ACT HERITAGE COUNCIL & PARTY JOINED, AUSTRALIAN INSTITUTE OF ARCHITECTS – AT 15/22 – time extended by 297 days. Delays occurred in this matter for a number of reasons including as a result of interlocutory issues of standing, the unavailability of a primary witness for the applicant, requests by parties for further time to prepare evidence and difficulty finding sufficient consecutive hearing days matching the availability of parties, their counsel and witnesses. The case raised complex and unique issues dealt with in a five day hearing. The members allocated to the matter required additional time to complete their decision given the volume of evidence and length of submissions to be considered.

OLD NARRABUNDAH COMMUNITY COUNCIL INC v ACTPLA & COMMISSIONER FOR SOCIAL HOUSING & PHILIP LEESON ARCHITECTS – AT15/34 – time extended by 229 days. The application for review was filed on 5 May 2015. Before the first directions hearing an application was lodged with the ACT Heritage Council about the subject properties. The parties agreed that the application to the tribunal should be delayed pending the Council's decision. The hearing proceeded in November 2015 and was listed initially for 3 days. A further 2 hearing days were required in December. The tribunal's decision was handed down in April 2016.

KATHLEEN MARY IBBOTSON v ACTPLA & NATIONAL CAPITAL PTY LTD – AT15/17 – time extended by 71 days. The hearing was listed for 3 days shortly before the end of the 120 day period to accommodate availability of parties and witnesses. Time was extended so that the members could consider the significant volume of evidence and submissions.

SABEENA OBEROI v ACTPLA – AT 14/97 – timeframe extended by 206 days. Complex and unique issues were raised in this application relating to the engagement of human rights and the interpretation of the Heritage Act. The members required additional time to finalise their decision.

ADRIAN MOSS v CONSERVATOR OF FLORA AND FAUNA – AT 15/61 – timeframe extended by 11 days. The timeframe was extended in this matter to allow the member sufficient time to finalise the decision after the hearing in December, taking into account the holiday period.

NATIONAL TRUST OF AUSTRALIA (ACT) PTY LTD v ACTPLA – AT15/26 – timeframe extended by 167 days. This matter was initially delayed pending the outcome of AT15/20 (National Trust of Australia v ACT Heritage Council). Subsequent delays were connected to public notification process for another development application. On 23 December 2015 the tribunal was advised that the matter would be discontinued. The applicant filed a notice of discontinuance on 8 January 2016.

NATIONAL TRUST OF AUSTRALIA (ACT) v ACT HERITAGE COUNCIL & CONRAD GARGET ANCHER MORTLOCK WOOLLEY – AT 15/97 – time extended by 28 days. This matter, which commenced very shortly before the holiday period, was delayed as a result of a number of factors including the holiday period and a late application to join a new party. The hearing took place over three days and the Tribunal reserved its decision. A short extension of time was required to allow the tribunal to consider the detailed evidence and submissions before finalising its decision.

FRIENDS OF HAWKER VILLAGE v ACTPLA & PEPPAS & MICALOS AT 15/101 – time extended by 42 days. This application was filed on 23 December 2015 and was delayed as a result of the holiday period and reduced availability of parties and counsel. The matter was heard on 7 and 8 April 2016 and the members did not finalise the decision due to complexity of issues until 2 June 2016.

OCCUPATIONAL AND PROFESSIONAL REGULATION

ACAT makes orders for the regulation and discipline of people in a wide range of professions and occupations including health professionals, legal practitioners, liquor licensees, security guards, real estate agents and various construction occupations. Applications may be made by a regulatory authority seeking orders to discipline a licensee or a registered person. Applications may also be made by a licensee or registered person for the review of decisions that affect their licence or registration. The latter applications are dealt with as occupational regulation cases rather than administrative review matters.

Mediation or conciliation conferences are used in many matters to enable the parties to fully explore the issues in dispute in a confidential setting. If the parties agree on an appropriate disciplinary outcome, a joint submission is made to the tribunal so that it may consider all relevant factors before making orders in the terms of the agreement reached. The parties may be required to explain the joint submission and provide further information relevant to the exercise of the tribunal's discretion.

Some applications require several interlocutory events and hearings of several days while others are completed over a shorter timeframe with only a brief hearing. Thirty-one new applications were received, and 40 matters finalised. The tables below show the number of applications received and completed by category.

| Total matters | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 43 | 47 | 58 | 41 | 31 |
| Applications Finalised | 41 | 48 | 33 | 52 | 40 |

| Health Practitioners | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 3 | 5 | 11 | 12 | 6 |
| Applications Finalised | 4 | 5 | 3 | 13 | 10 |

| Lawyers | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 9 | 13 | 10 | 6 | 12 |
| Applications Finalised | 10 | 12 | 10 | 7 | 11 |

| Liquor Licensees | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 5 | 5 | 1 | 2 | 0 |
| Applications Finalised | 5 | 5 | 1 | 2 | 0 |

| Security Guards | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 7 | 7 | 6 | 4 | 2 |
| Applications Finalised | 4 | 9 | 4 | 4 | 4 |

| Construction Occupations | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|--------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 7 | 7 | 9 | 7 | 2 |
| Applications Finalised | 7 | 5 | 5 | 10 | 6 |

| Long Service Leave Authority | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 0 | 8 | 16 | 2 | 0 |
| Applications Finalised | 0 | 8 | 5 | 11 | 0 |

| Working with Vulnerable People | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|--------------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | - | - | - | 3 | 3 |
| Applications Finalised | - | - | - | 2 | 3 |

| Miscellaneous | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 12 | 2 | 5 | 5 | 6 |
| Applications Finalised | 11 | 4 | 5 | 3 | 6 |

The Australian Health Practitioner Regulation Agency has asked tribunals to provide more detailed information in annual reports about applications relating to health practitioners. Some applications are filed by Boards seeking disciplinary orders while others are filed by practitioners who appeal decisions made by Boards about them. Of the six new applications relating to health practitioners, three related to medical practitioners and three to nurses/midwives. The categories of notification are as follows:

| Category of notification of ACAT Occupational Regulation matters relating to Health Practitioners | Number |
|---|--------|
| Boundary violation | 2 |
| Clinical care | 2 |
| Registration | 2 |
| Total number of matters | 6 |

DISCRIMINATION

The tribunal hears complaints under the Discrimination Act 1991 referred to it by the Human Rights and Discrimination Commissioner and registers agreements reached during conciliations conducted by the Commissioner.

| Discrimination | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|----------------------|---------|---------|---------|---------|---------|
| Complaints Referred | 19 | 17 | 12 | 7 | 11 |
| Complaints Finalised | 30 | 14 | 20 | 11 | 11 |

The 11 new complaints involved nine complainants. The primary ground of complaint for five complainants was unlawful discrimination on the ground of race; five were concerned primarily with disability discrimination, and one with age discrimination.

Of the 11 matters finalised this year two were upheld, seven were discontinued and two dismissed after a hearing.

Age of pending files for discrimination matters as at 30 June 2016

| Age of files | 0–3 months | 3–6 months | 6–9 months | 9–12 months | 12 months+ |
|----------------------|------------|------------|------------|-------------|------------|
| Number of complaints | 1 | 1 | 0 | 1 | 0 |

Most applicants in discrimination matters do not have legal representation. While the tribunal's processes allow parties to represent themselves, the law relating to discrimination is complex and technical and all parties would benefit from assistance with the preparation of their cases.

MENTAL HEALTH

The Mental Health Act 2015 commenced on 1 March 2016 bringing widespread changes to the law and to the tribunal's work in this area. The legislation focuses on the capacity of a person with mental illness or disorder to make decisions about their own treatment, care and support, with assistance if needed. Guardians can make decisions about treatment for people who do not have the capacity to make their own decisions and who do not resist or refuse treatment.

The tribunal may make orders authorising the assessment of people and the involuntary treatment of people with a mental illness or mental disorder, including psychiatric treatment orders, community care orders and forensic mental health orders. Most orders are reviewed on the tribunal's own initiative before expiry.

The tribunal authorises extensions of periods of emergency detention and the administration of electro-convulsive therapy.

In addition, the tribunal considers matters referred to it by courts. The tribunal may determine and report to a court about whether a person charged with a criminal offence has a mental impairment. The tribunal may also make mental health orders in relation to people who are required by courts to submit to the jurisdiction of the tribunal because they are unfit to plead, or have been found not guilty by reason of mental impairment, or have had charges summarily dismissed. The tribunal can also review orders for detention and impose conditions on release from detention of a person found not guilty by reason of mental impairment.

Procedures in this area are largely determined by the authorising law which sets tight time frames and statutory obligations that govern workflow. The tribunal sits at The Canberra Hospital on Monday afternoon and Thursday morning and at the tribunal's own premises each Thursday afternoon. Hearings are also held at the Older Persons Mental Health Unit at Calvary Hospital from time to time. Some referrals relating to offenders are dealt with in courts because the tribunal does not have an on-site custodial facility.

| Mental Health | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|---|---------|---------|---------|---------|---------|
| Applications for Mental Health Orders | 305 | 358 | 325 | 346 | 246 |
| Applications for Extension of Emergency Detention | 225 | 267 | 299 | 262 | 334* |
| Forensic Referrals | 52 | 65 | 43 | 22 | 22 |
| Applications for ECT | 16 | 14 | 10 | 10 | 14 |
| Own Motion Reviews of Orders | 786 | 848 | 877 | 851 | 917 |
| Requests for Revocation | 151 | 109 | 80 | 156 | 254* |

* This data comes from the Chief Psychiatrist's records.

The new law appears to have resulted in a decrease in initial applications but it is too early to form a clear picture about whether the decrease will continue, or about the extent to which the decrease is a consequence of an increase in the period of emergency detention or the focus on decision-making capacity or is in part related to the transition of data to ICMS. These issues may be clearer in ACAT's next annual review.

The law was initially due to commence in November 2015, but a decision was made in September/October to delay commencement until March 2016. The increase in own motion reviews comes about because shorter orders were made in many matters before October 2015 in anticipation of a November commencement date. The delay in commencement led to additional reviews of those orders.

Other consequences of the changes to the law include increased length of hearings and a substantial increase to the time needed by members and registry staff to prepare orders. Orders are now accompanied by written statements that set out how the criteria for making the order were met. Any saving of time arising from a decrease in applications has been more than off-set by this change.

Files in this jurisdiction relate to the subject person rather than to the discrete application or review relating to them. The file technically remains open, unless the person who is the subject of the application dies. It has been difficult to obtain reports on the number of matters (as distinct from files) finalised and on outcomes of applications and reviews. The previous case management system did not have a mechanism that allowed reports to be easily generated about outcomes other than closure of the file. It is hoped that the combined effect of the implementation of ICMS in December 2015 and the new law in March 2016 will make it easier to obtain reliable reports on outcomes for the next annual review when both changes will have been in place for the full reporting period.

The strict statutory time frames ensure that all applications are considered and determined quickly.

The tribunal's ability to meet its statutory obligations is greatly assisted by the work of ACT Health's Tribunal Liaison Officer and her assistant, the duty lawyer service operated by Legal Aid ACT and the work of the Public Advocate of the ACT. These services are vital for ensuring procedural fairness for people who are the subject of applications and reviews. ACAT acknowledges their important contribution and their on-going commitment to this work.

GUARDIANSHIP AND MANAGEMENT OF PROPERTY

The Guardianship and Management of Property Act 1991 gives ACAT power to make orders appointing guardians and financial managers for adults who have impaired decision-making ability.

The tribunal may also make orders about enduring powers of attorney and about people for whom a guardian or manager has been appointed. Orders can be made to provide consent for prescribed medical procedures; in a situation of emergency; to revoke enduring powers of attorney or remove attorneys; to make a declaration about the interpretation or effect of an enduring power of attorney or the decision-making capacity of a principal; to give direction or advice to a guardian, manager or attorney and to adjust some financial transactions.

This is a protective jurisdiction with a strong inquisitorial process. Tribunal staff request reports from health professionals, care providers and the Public Trustee and Guardian of the ACT to provide information for hearings.

Applications are processed and listed for hearing within 3 to 6 weeks of receipt. Most matters are finalised on the first listing date. A small number of matters are adjourned to allow further information to be obtained. Hearings may be held at shorter notice and may take place at a hospital or where the protected person lives.

The role of the tribunal continues after orders are made. Each order must be reviewed on the tribunal's own initiative at least once in each three year period. Reviews are scheduled for any time from 3 months to three years after an order is made depending on the nature of the condition that leads to the impairment of decision-making and the life circumstances of the protected person.

Review hearings are usually conducted "on the papers", based on information gathered from the protected person, the guardian or manager and any carer or other interested party. Full hearings are scheduled at the request of the protected person, or if the information provided (or not provided, as the case maybe) indicates that there has been a change in circumstances.

The tribunal writes to financial managers each year to remind them of their statutory obligation to submit accounts to the Public Trustee and Guardian of the ACT for examination, who in turn reports to the tribunal about the outcome of examinations and about any failure to submit reports. The tribunal reviews the appointment of managers who do not comply with the obligation.

| Guardianship & Management of Property Orders | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|--|---------|---------|---------|---------|---------|
| Applications Lodged | 265 | 299 | 320 | 357 | 313 |
| Own Motion Reviews of Orders | 428 | 460 | 504 | 556 | 480 |
| Emergency Appointments | 52 | 24 | 20 | 18 | 24 |

We thought there may be an increase in applications for orders appointing guardians for people with a mental illness as a result of the changes to the mental health law, but that was not apparent in the first three months of the operation of the new law.

The tribunal records the primary condition affecting people the subject of new applications using four categories recognised internationally. Other Australian guardianship tribunals keep the same data. The category 'Acquired brain injury' includes people who have had strokes or other illness such as meningitis, as well as those who have sustained traumatic injury in accidents.

The most striking aspect of the year's work is the increasing percentage of applications for people with dementia. Many will have co-morbid mental illness and the changes to the mental health law may have some relevance here, but similar demographic changes have been noted by other tribunals. It is more likely then, that the change reflects the increasing prevalence of dementia and perhaps also an increased focus on providing support, particularly to people with an intellectual disability, for decision-making without the need to appoint a substitute decision-maker. The data indicates as follows:

| Conditions affecting subject people | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|-------------------------------------|---------|---------|---------|---------|---------|
| Dementia | 35% | 38% | 32% | 34% | 50% |
| Mental Illness | 32% | 32% | 29% | 28% | 18% |
| Intellectual Disability | 20% | 22% | 25% | 19% | 17% |
| Acquired Brain Injury | 13% | 8% | 14% | 19% | 15% |

Anecdotally, we believe there is an increase in disputes about enduring powers of attorney. These matters can involve high levels of conflict between family members and require longer hearings, more detailed preparation and greater gathering of, or directions about, evidence. There are often many participants and members and staff may need to carefully control hearings to manage emotional outbursts and anger. It is difficult to obtain empirical reports about this because most cases include an application for orders appointing a guardian or manager and are recorded as such in the case management system. It is to be expected that disputes about powers of attorney will become more common because of their increased use in the community.

ACAT acknowledges the considerable assistance it receives from staff of the Public Trustee and Guardian of the ACT in this area. The reports provided to the tribunal are invaluable. The quality of participation in hearings is of the highest standard, contributing constructively to this area of work and the tribunal is grateful for the assistance.

UTILITIES – ENERGY AND WATER

ACAT has jurisdiction under the Utilities Act 2000 to determine applications for hardship assistance for energy and water customers who cannot afford to pay their bills and are facing disconnection or restriction of supply (hardship applications). ACAT also investigates and determines complaints made by customers and consumers against energy and water utilities licensed in the ACT, including complaints about the Feed-in Tariff (complaint applications). The Tribunal performs the role of Energy Ombudsman for the ACT and works in conjunction with the Australian Energy Regulator in this area.

ENERGY AND WATER HARDSHIP APPLICATIONS

On receipt of an application, an initial hearing is held in which members consider the financial circumstances, utility usage and needs of the applicant. Orders are made requiring regular payments of amounts sufficient to meet ongoing usage costs and make a contribution to reducing any existing debt over a reasonable period of time. Hardship applications are case-managed for so long as the applicant remains under threat of disconnection due to debt. Orders are reviewed by a Deputy Registrar and staff at three or six month intervals according to the client's circumstances, payment record and any other case-management directives issued by the tribunal. Staff may refer cases to members for further hearing or prepare revocation orders or orders discharging debt for consideration by a Senior or Presiding Member.

New Applications

In 2015–16 the reduction in the number of new applications continued as the in-house hardship programs of utilities improve. New applications continue to be more complex, often involving high levels of debt and energy needs (often connected to illness) that exceed the consumer's capacity to pay. These cases require longer-term case management.

Home Visits

A home visit is offered to clients who have mobility issues – physical, psychological or age related. Typically, a Senior Member or Presiding Member undertakes these visits accompanied by a registry staff member. After the initial home visit, reviews are often conducted by telephone. During 2015–16, 5 home visits were conducted.

Review of Orders

In 2015–16, 7,318 orders were reviewed by staff and 966 orders were listed for a review hearing before members. Staff prepared 993 debt discharge orders and 686 revocation orders for consideration by a Presidential, Senior or Presiding Member. An additional 23 debt discharge orders and 150 revocation orders were made by a Senior or Presiding Member at hearing. Debts valued at slightly more than \$400,000 were discharged for 1,016 cases.

| Hardship Applications | 2011–12 | 2012–13 | 2013–14 | 2014–15 | 2015–16 |
|------------------------|---------|---------|---------|---------|---------|
| Applications Lodged | 874 | 847 | 1116 | 938 | 852 |
| Reconnection Orders | 179 | 56 | 114 | 122 | 70 |
| Initial Hearings | 988 | 915 | 1233 | 754 | 541 |
| Discharge Orders | 920 | 1042 | 1029 | 1120 | 1016 |
| Home Visits | 49 | 14 | 2 | 5 | 5 |
| Staff Reviews | 5656 | 5261 | 5907 | 6840 | 7318 |
| Review Hearings | 1122 | 1179 | 865 | 1102 | 966 |
| Applications Finalised | 990 | 848 | 886 | 1018 | 836 |

ENERGY AND WATER COMPLAINT APPLICATIONS

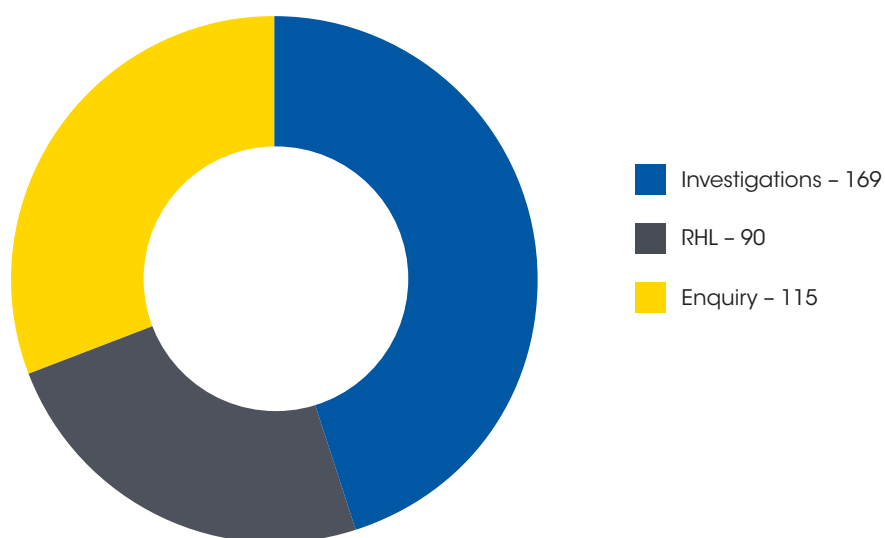
There was an increase in complaint applications from 238 in 2014–15 to 259 in 2015–16. Detailed information is provided about the complaints because this review report also assists to meet the tribunal's reporting obligations to regulators.

Complaints process

The ACAT energy & water complaint process emphasises early informal resolution and wherever possible, follows the processes used by energy & water ombudsman schemes in other jurisdictions. When a complaint is received, registry staff assess the complaint and determine the appropriate action. This can include:

- referring the customer back to the utility (Unassisted Referral/Enquiry);
- referring the complaint to a higher level (RHL/Assisted Referral) within the utility and requesting it contact the customer;
- commencing an investigation. This includes requesting a written response and information from the utility. Once the response is received, a process of conciliation occurs which includes the applicant having an opportunity to provide a response and further information. If the parties cannot agree, or the tribunal considers that the matter does not require further investigation, the complaint may be referred to a hearing;
- referring the complaint straight to the tribunal's hearing processes for conference, directions or hearing by a tribunal member.

Table 1: How complaints were handled

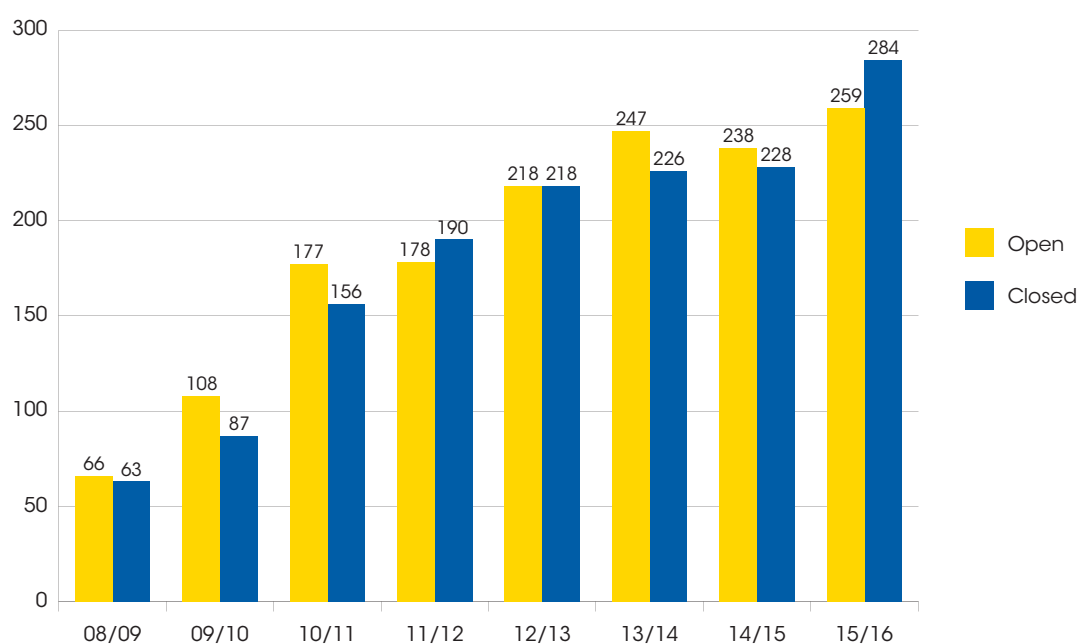


New Complaints

The 2015–16 financial year saw a 9% increase in complaint applications with 259 complaints received. This is the highest number of complaints ever received and nearly four times the number of complaints received in 2008/09. In total, 90 complaints were referred back to the utility (RHL) and 169 complaints were investigated.

The workload is managed through pro-active case management and streamlining the manner in which complaints are finalised.

Table 2: Total complaints open & closed

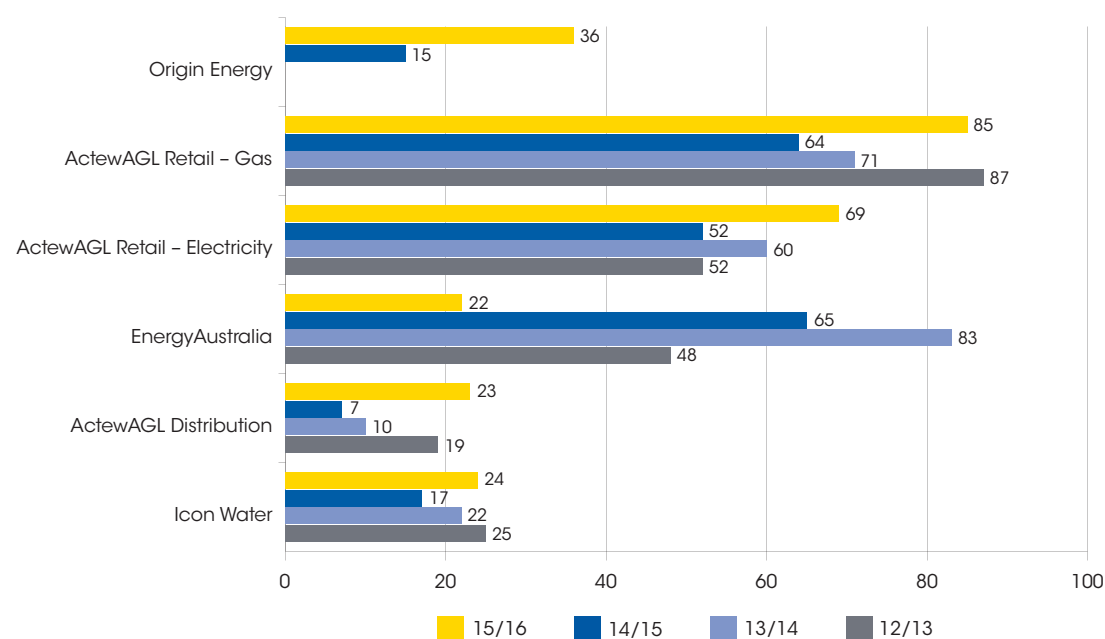


ActewAGL Retail Gas (AGL) had a 32% increase in complaints during the financial year,

with complaint numbers returning to levels experienced during 2012/13. The most common complained about matters were disputed high bills, customers having their credit rating affected and accounts being issued based on estimated rather than actual readings.

ActewAGL Retail Electricity also had a 32% increase in complaints during the financial year. The most common complained about matters for this utility were disputed high bills, adverse credit ratings and poor customer service.

Table 3: New Complaints by Utility



Origin Energy was the third most complained about utility. This reflects its continued push into the ACT market with complaints about customers experiencing difficulty when transferring from another provider and disputed high bills.

EnergyAustralia complaints decreased substantially, dropping 65% from the previous year and 73% compared with the 2013/14 financial year. This suggests that EnergyAustralia's billing system problems have resolved. The current level of complaints better reflects EnergyAustralia's market share in the Territory.

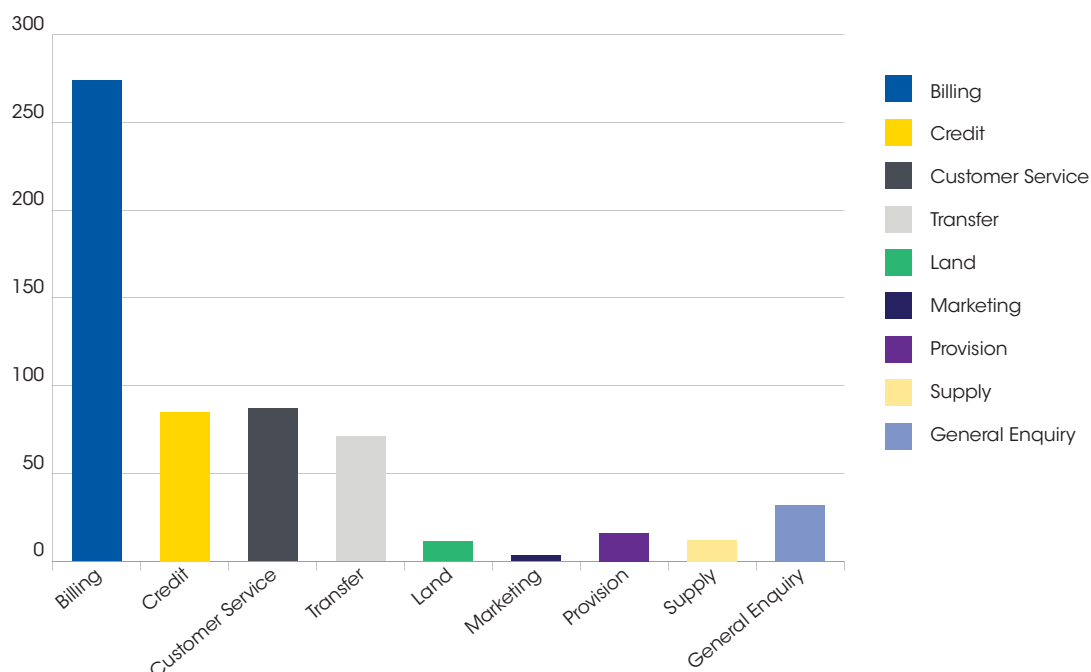
ActewAGL Distribution experienced a large increase in complaints (over 200%), however this is from a low base. As ActewAGL Distribution's complaint numbers involve both electricity and gas distribution networks, the number of complaints is still relatively low.

While Icon Water's complaint numbers increased, over the longer term complaint numbers are relatively stable. These complaints involve both retail and network components and complaint issues are diverse. The most common complaints relate to disputed high bills, customer service and sewer / stormwater blockages.

Complaint issues

Unsurprisingly, billing remains the most complained about issue. 46% of complaints are about billing. Specifically, 18% of complaints received concern a high or disputed bill. The next highest billing complaint related to billing errors and delayed bills each of which was raised in 5% of complaints.

Table 4: Complaints issues raised in applications



With Origin Energy's entry into the ACT market, transfer complaints have increased. Transfer complaints can be complicated because investigations often involve multiple utilities. Transfer problems were raised as an issue in 12% of complaints.

Poor service and failure to respond were the biggest individual issues from a customer service perspective. Both issues were raised in 6% of complaint applications.

Credit issues now make up about 14% of complaints received, including about 7% of complaints concerning customers who have had their credit rating affected. This figure is similar to the previous financial year, however such complaints were rare five years ago and the growth in this issue category requires monitoring. Credit rating complaints can be complex to resolve because many applicants use "credit-repair" agencies which charge upfront fees and do little more than lodge complaint applications that are otherwise free.

Common Boiler Hot Water Complaints

With the increase in apartment complexes in the ACT, complaints relating to gas-fired common boiler hot water systems require monitoring. These systems have a common hot water boiler located in an apartment complex (usually the basement) which provides hot water for occupants in lieu of individual hot water systems. The occupants are charged for gas usage based on their metered hot water consumption.

The systems generally have data loggers located in a central area and actual meters in the occupant's property. The data logger shows the meter reading without the utility having to access the occupant's apartment. Complaints usually come to light as high bill investigations and are resolved through a process of aligning the data logger and the meter. This will often be problematic as it requires access to the occupant's property for the alignment and it has on occasion been discovered that the meter needs to be replaced (which then requires the occupant to provide further access).

While these complaints are still low in volume compared to other issues, resolution often requires involvement of the Retailer, the Distributor, the Owners Corporation, owners and occupiers as well as tradespeople. The issues can be time-consuming and frustrating for customers. A case study about one such matter is set out below. Energy and Water Ombudsman in other jurisdictions report an increase in similar complaints.

Table 5: Complaint issues raised in applications

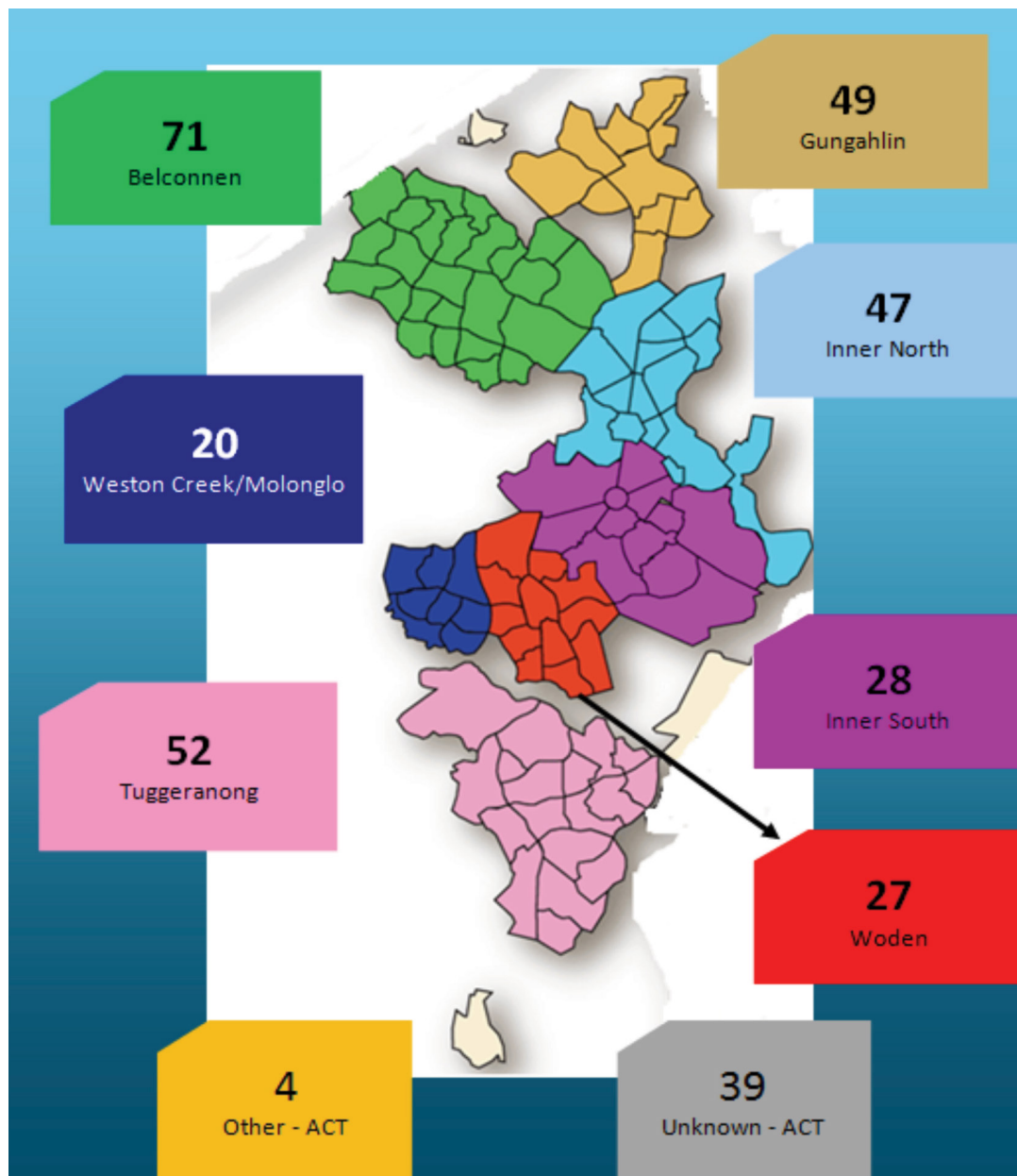
| | ActewAGL Electricity | ActewAGL Gas | ActewAGL Distribution Electricity | ActewAGL Distribution Gas | ICON Water | EnergyAustralia Electricity | EnergyAustralia Gas | Ausgrid formerly EA | Origin Gas | Origin Electricity | Not licensed utility | Total |
|--|-------------------------|-----------------|---|------------------------------|---------------|--------------------------------|------------------------|------------------------|---------------|-----------------------|-------------------------|--------------|
| Billing | | | | | | | | | | | | 46.4% |
| High bill or disputed account | 24 | 45 | | | 17 | 6 | 2 | 0 | 6 | 7 | 0 | 107 |
| Tariff (time of use, prices) | 5 | 1 | | | 1 | 1 | 1 | 0 | 0 | 3 | 0 | 12 |
| Feed In Tariff (ACT Government) | 0 | 0 | | | 0 | 0 | | 0 | 0 | 0 | 0 | 0 |
| Retail Solar Credits | 0 | 0 | | | 0 | 0 | | 0 | 0 | 1 | 0 | 1 |
| Billing error | 8 | 9 | | | 2 | 1 | 3 | 0 | 1 | 4 | 0 | 28 |
| Delayed bill or bill not received | 9 | 11 | | | 3 | 3 | 0 | 0 | 0 | 2 | 0 | 28 |
| Direct Debit/Even Pay | 1 | 11 | | | | 0 | 0 | | 0 | | 0 | 12 |
| Fees and charges | 3 | 9 | | | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 14 |
| Estimated account, meter not read | 7 | 15 | | | 1 | 0 | 1 | 0 | 0 | 2 | 0 | 26 |
| Backbilling | 3 | 5 | | | 2 | 2 | 2 | 0 | 0 | 1 | 0 | 15 |
| Delay in issuing refund or refund not received | 1 | 2 | | | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 5 |
| Meter accuracy or fault | 2 | 4 | | | 0 | 0 | 0 | 0 | 1 | 2 | 0 | 9 |
| Debt transferred from another account | 3 | 1 | | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| Common hot water system issue | 0 | 11 | | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11 |
| Concessions | 2 | 0 | | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Category Total | 68 | 124 | 0 | 0 | 27 | 13 | 9 | 0 | 8 | 25 | 0 | 274 |
| Credit | | | | | | | | | | | | 14.4% |
| Facing disconnection due to non-payment | 1 | 1 | | | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 4 |
| Disconnected/Restricted due to non-payment | 4 | 2 | | | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 8 |
| Contacted by debt collectors | 4 | 4 | | | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 13 |
| Credit rating affected | 17 | 24 | | | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 43 |
| Payment difficulties | 4 | 1 | | | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 7 |
| Arrears requiring ACAT protection (hardship) | 0 | 0 | | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arrears requiring payment plan | 3 | 2 | | | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 10 |
| Category Total | 33 | 34 | 0 | 0 | 10 | 5 | 2 | 0 | 0 | 1 | 0 | 85 |
| Customer service | | | | | | | | | | | | 14.7% |
| Poor service | 16 | 11 | 2 | 0 | 3 | 1 | 2 | 0 | 1 | 7 | 0 | 43 |
| Failed to respond | 10 | 7 | 1 | 1 | 5 | 1 | 0 | 0 | 2 | 2 | 0 | 29 |
| Incorrect advice or information provided | 3 | 5 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 11 |
| Privacy concern or breach | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 4 |
| Category Total | 30 | 25 | 4 | 1 | 10 | 2 | 2 | 0 | 3 | 10 | 0 | 87 |
| Transfer | | | | | | | | | | | | 12.0% |
| Contract (eg variation, fees) | 2 | 0 | 1 | 0 | | 0 | 0 | 0 | 1 | 1 | 0 | 5 |
| Transferred without consent | 2 | 0 | 0 | 0 | | 2 | 1 | 0 | 0 | 1 | 0 | 6 |
| Site ownership issues | 9 | 3 | 0 | 0 | | 2 | 0 | 0 | 4 | 9 | 0 | 27 |
| Transferred in error | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Cooling cancellation not-actioned | 1 | 1 | 0 | 0 | | 0 | 0 | 0 | 0 | 2 | 0 | 4 |
| Delay in issuing bill after transfer | 2 | 2 | 0 | 0 | | 0 | 0 | 0 | 0 | 3 | 0 | 7 |
| Billing problems on transfer | 1 | 1 | 0 | 0 | | 0 | 0 | 0 | 2 | 5 | 0 | 9 |
| Request for new account/transfer rejected | 4 | 3 | 0 | 0 | | 0 | 1 | 0 | 2 | 3 | 0 | 13 |
| Category Total | 21 | 10 | 1 | 0 | 0 | 4 | 2 | 0 | 9 | 24 | 0 | 71 |

Table 5: Complaint issues raised in applications (continued)

| | ActewAGL Electricity | ActewAGL Gas | ActewAGL Distribution Electricity | ActewAGL Distribution Gas | ICON Water | EnergyAustralia Electricity | EnergyAustralia Gas | Ausgrid formerly EA | Origin Gas | Origin Electricity | Not licensed utility | Total |
|---|-------------------------|-----------------|---|------------------------------|---------------|--------------------------------|------------------------|------------------------|---------------|-----------------------|-------------------------|---------------|
| Land | | | | | | | | | | | | 1.9% |
| easement (access, other) | | | 3 | 0 | 0 | | | | | | | 3 |
| vegetation management | | | 1 | 0 | 0 | | | | | | | 1 |
| network assets (health & safety, maintenance, placement) | | | 2 | 1 | 0 | | | | | | | 3 |
| other (general, property damage/restoration) | | | 2 | 0 | 2 | | | | | | | 4 |
| Category Total | 0 | 0 | 8 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 11 |
| Marketing | | | | | | | | | | | | 0.5% |
| information (door-to-door, other sales channels, phone) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| misleading (door-to-door, other sales channels, phone) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 2 |
| non account holder (door-to-door, other sales channels, phone) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| other (door-to-door, other sales channels, phone) | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| pressure sales (door-to-door, other sales channels, phone) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Category Total | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 3 |
| Provision | | | | | | | | | | | | 2.7% |
| disconnection/restriction (error, meter access, safety/defect) | | | 1 | 2 | 0 | | | | | | | 3 |
| existing connection (de-energisation, energisation/connection, interference, meter removal, repair, safety, supply upgrade, other) | | | 1 | 1 | 0 | | | | | | | 2 |
| solar – network connection issues | | | 2 | 0 | 0 | | | | | | | 2 |
| new connection (capital contribution, delay, information, other) | | | 4 | 0 | 2 | | | | | | | 6 |
| restriction (error, meter access, safety/defect) | | | 2 | 1 | 0 | | | | | | | 3 |
| Category Total | 0 | 0 | 10 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 16 |
| Supply | | | | | | | | | | | | 2.0% |
| off supply–planned (damage/loss, duration, frequency, health & safety, inconvenience, information/notice, other) | | | 1 | 0 | 0 | | | | | | | 1 |
| off supply–unplanned (damage/loss, delivery delay, duration, frequency, health & safety, inconvenience, information/notice, loadshed) | | | 2 | 0 | 0 | | | | | | | 2 |
| quality (colour, health/safety, pressure, taste/odour, other) | | | 2 | 1 | 0 | | | | | | | 3 |
| sewer/stormwater overflow/blockage | | | | | 5 | | | | | | | 5 |
| variation (damage/loss, frequency, health & safety, inconvenience, information) | | | 1 | 0 | 0 | | | | | | | 1 |
| Category Total | 0 | 0 | 6 | 1 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 12 |
| General Enquiry | | | | | | | | | | | | 5.4% |
| energy/water | 6 | 8 | 0 | 0 | 4 | 0 | 0 | 0 | 0 | 2 | 4 | 24 |
| non energy/water | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 8 |
| Category Total | 7 | 9 | 0 | 0 | 4 | 0 | 0 | 0 | 0 | 4 | 8 | 32 |
| | | | | | | | | | | | | 100.0% |
| Retailer Total | 159 | 202 | 29 | 8 | 60 | 24 | 15 | 0 | 21 | 65 | 8 | 591 |

* Hardship complaints are managed separately and are not included in this data

Table 6: Client Snapshot

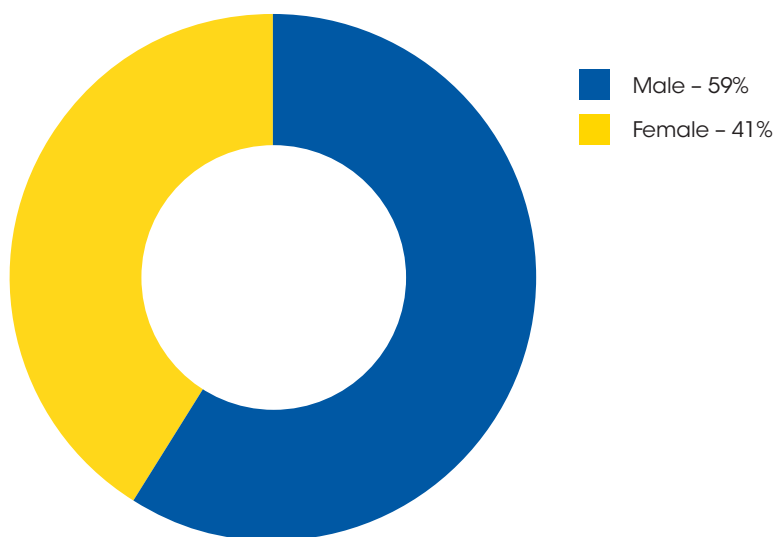


Unsurprisingly, the majority of complaint applications and enquiries are received from domestic customers. 93% of complaints related to residential premises. Complaints by business customers generally involve much higher amounts in dispute.

While there were slightly more complaints received from the north side of Canberra, generally complaints are spread over the ACT.

During the last financial year, Males were complainants more than Females.

Table 7: Complaints by gender

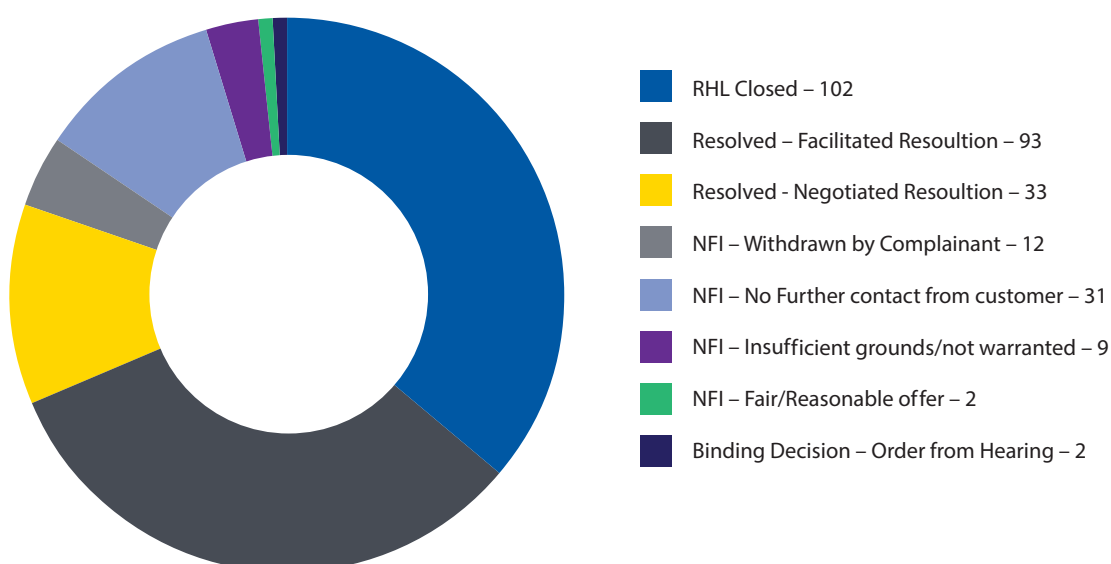


OUTCOMES

284 complaints were closed during the financial year. This is the highest number of complaints closed in a financial year.

Of the complaints closed, 44% of complaints were resolved as a result of a matter being investigated and a resolution being facilitated or negotiated. 15% of complaints were withdrawn or abandoned by customers. 4% of complaints were closed after the Tribunal considered the complaint had no grounds, or the utility had made a reasonable offer. Less than 1% of complaints required the Tribunal to make a decision following a hearing.

Table 8: Outcome of complaints



Of the 102 complaints referred back to utilities for investigation and direct contact with the complainant, 76% were resolved by the utility without further ACAT involvement.

Table 9: RHL success rate

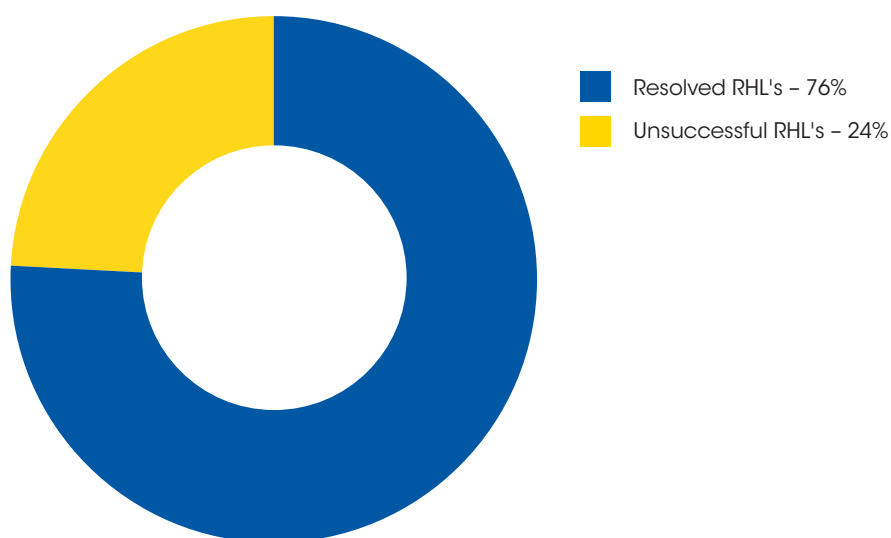
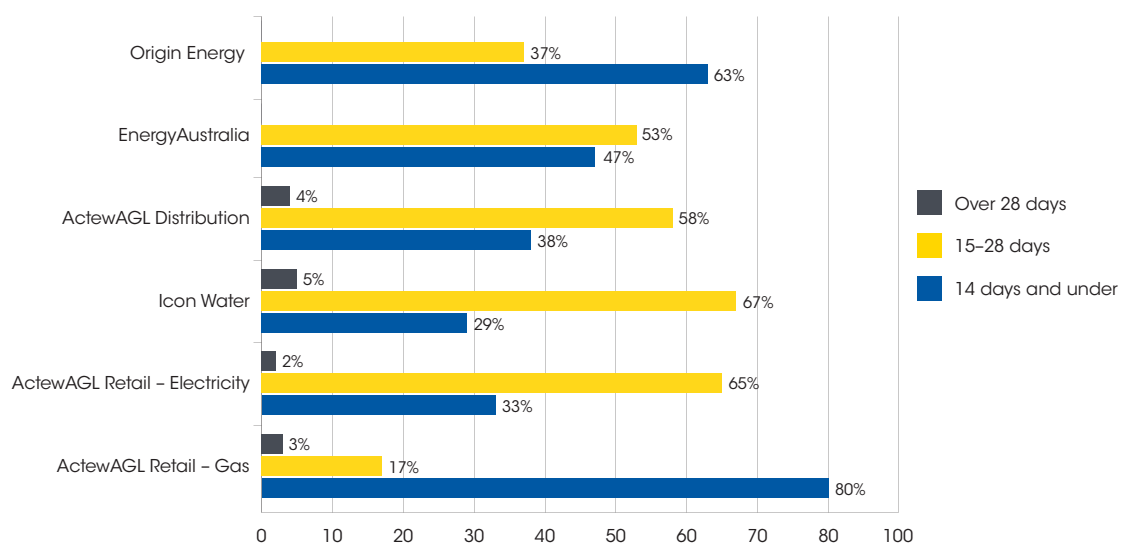


Table 10: Initial response times



Systemic issues

Section 174 of the Utilities Act requires the tribunal to report issues of a systemic nature to the relevant Minister and to the Independent Competition & Regulatory Commission (ICRC).

No systemic issues were reported during the 2015–2016 financial year.

Significant Case

One complaint resolved during the financial year involved Barnados, ActewAGL Retail, ActewAGL Distribution, the Commissioner for Social Housing, Community Housing Canberra and occupants of 43 units. The case concerned high gas bills for common hot water at an apartment complex which housed many vulnerable clients. Due to the involvement of numerous parties, the complaint was progressed through directions hearings, with parties given actions to complete and then required to report back to the Tribunal at subsequent hearings.

This was a difficult matter. The utilities did not know who was consuming what volume of gas and in some cases, had the wrong billing address. Housing ACT arranged an engineering report and there was a co-ordinated approach to test every meter in the 43 units. The testing revealed significant meter errors and resulted in the total re-billing of the complex on known actual reads. The Tribunal liaised with ActewAGL Retail to review all accounts at the complex. This ensured appropriate payment amounts were set, or refunds arranged, for customers who had overpaid. The Tribunal acknowledges the willing participation of the parties in a complex process which achieved positive outcomes for the low income residents of the complex.

Activities

Reports, Submissions & Information

During the financial year, the tribunal:

- provided data to Australian Energy Market Commission;
- provided information to the ICRC regarding utility compliance on a yearly basis;
- continued discussions with the AER

Working with other Ombudsman schemes

The tribunal is a member of the Australian & New Zealand Energy & Water Ombudsman Network (ANZEWON), represented by the ACAT President. ANZEWON membership allows the tribunal to expand its expertise in the energy and water jurisdiction and where possible, provide a service which is consistent with other ombudsman schemes. ACAT staff visited the NSW Energy & Water Ombudsman (EWON) in December 2015.

Participation with Industry & Community

During the financial year, the tribunal:

- Continued regular meetings with ActewAGL Retail (Electricity)
- Met with Origin Energy & AGL Energy complaints representatives in Melbourne
- Met with the Icon Water complaints team
- Held a meeting with AGL in Canberra regarding ACAT hardship and complaints processes
- Attended ActewAGL Distribution information sessions regarding proposed electricity vegetation changes
- Met with ActewAGL Distribution to discuss the harmonisation of the NSW/ACT gas retail markets
- Met with representative of the ACT Government's Environment & Planning Directorate regarding ACT and National energy tariff reforms
- Discussed proposed changes to the energy levy with ACT Treasury
- Attended an ICRC presentation reviewing the recent experiences in SA water pricing regulatory process

FURTHER INFORMATION

MATERIAL INTERESTS

The President reported to the Attorney General in writing about disclosures of material interests made by tribunal members under section 50 of the ACAT Act, as required by section 51 of the Act.

SYSTEMIC ISSUES

The Attorney-General and his directorate were advised of a small number of amendments that could usefully be made to several authorising laws. Comments were made on many proposed reforms and extensions to the tribunal's areas of work.

ENGAGEMENT

Stakeholder meetings were held with people interested in the work undertaken by the tribunal in relation to residential tenancies, guardianship and management of property and energy and water.

The President serves on the executive committees of the Council of Australasian Tribunals and the Australian Institute of Administrative Law and participates in bi-annual meetings of the Australian Guardianship and Administration Council, the Australian and New Zealand Energy and Water Ombudsman Network and of heads of tribunals relating to health practitioners, mental health matters and guardianship matters. She continued to work closely with the unit responsible for implementation of the Mental Health Act 2015.

The ACAT Legal Registrar and Professor Spender participated in the National Tribunals Alternative Dispute Resolution Network. Professor Spender participated in monthly meetings of the ACT Joint Rules Advisory Committee as the President's nominee.

The tribunal continued its engagement with law students at both the Australian National University and Canberra University by offering observation opportunities, internships of between 10 and 20 days duration and identifying research projects. There is almost always a student on-site. Their presence encourages a culture of learning within the tribunal and expands the knowledge base of young lawyers about the work of the tribunal. Their contribution is gratefully acknowledged.

TRIBUNAL EXCELLENCE FRAMEWORK

During early 2016 ACAT members and staff participated in Tribunal Excellence Framework self assessment sessions. Nine staff and 13 members attended the sessions, facilitated by Belinda Cassidy, Principal Claims Assessor with the NSW State Insurance Regulatory Authority. The results will be used to facilitate further workshop with participants to guide the development of a strategic plan during the early part of 2016–17.

ACAT FORMS RE-DESIGN PROJECT

A project was undertaken during 2015–16 to re-design ACAT forms to assist with the introduction of the new case management system, ICMS. The new forms were designed to be more accessible for clients, with the ability to print forms and complete them by hand, or type the information on the screen and print out for lodgement. The numbers of ACAT forms were streamlined, with some forms being combined and others being discontinued.

IN PROSPECT

A decision by Government during 2016 will increase the jurisdictional limit of the civil jurisdiction of the ACAT to \$25,000, from its current limit of \$10,000. Work is underway on developing new processes for the expanded jurisdiction with a strong focus on early alternative dispute resolution and pro-active case management. The new jurisdictional limit commences on 9 December 2016.

THANKS

ACAT is a busy and complex entity because of the diversity of its work and the large number of tribunal users, sessional members and student interns who come and go in the course of a week. The presidential members and Senior Member Robinson acknowledge the importance of the work done by ACAT's registry staff to keep things on track. This year they took on the challenge of being the first area to implement the new Courts and Tribunal case management system with enthusiasm. It was a demanding and sometimes frustrating project involving significant change. Because all procedures and processes had to be reviewed and changes made in a number of areas while the daily business of the tribunal continued, registry staff now have a deeper understanding of how the tribunal does and can work. This has been an important stage in the development of ACAT as an institution. It has also assisted staff to feel more confident about managing other major change, such as changes to laws and jurisdiction. It is a pleasure to work with them.

Thanks are also due to the members of the ICMS project team who were professional, responsive and above all, patient.

The sessional members of the tribunal make an enormous contribution to the ACT legal system. They are hard-working, enthusiastic about our work and good humoured. They are valuable members of the ACAT family.

We acknowledge also the ongoing support of the Principal Registrar and our colleagues in the ACT Courts, the Justice and Community Safety Directorate and the assistance and support of all the organisations which are involved with the daily work of the tribunal.

Linda Crebbin
President
November 2016

